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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In The Matter Of

Amendment of Section 73.202(b)
Table of FM Allotments
Coolidge and Gilbert,
Arizona

)
)
) MM Docket No. 95-109
) RM-8665
)

To: The Chief
Allocations Branch

DOCKET FILE COPY ORIGINAL

COMMENTS

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Dated: September 6, 1995

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SUMMARY

The Comments in this proceeding deal with whether the Commission should amend its Table of Allotments in order to reallocate FM Channel 280 from Coolidge to Gilbert, Arizona as a Class C2 facility, and, in turn, modify the license for Station KBZR(FM), to specify Gilbert, Arizona as the Station's community of license. Rainbow Broadcasting, Inc., the licensee of Station KBZR(FM), supports the proposed changes.

As Rainbow shows, the choice presented herein is whether to maintain two aural transmission services at Coolidge or allow one to be reallocated to the community of Gilbert, which is nearly seven times larger and without its own aural transmission service. Gilbert lies at the fringe of the Phoenix Urbanized Area and does not represent a preferential arrangement of allotments.

In support of the amendment, Rainbow establishes that Gilbert is entitled to its first service by virtue of it being a recognized community with its own services and maintaining substantial differences from the rest of the metropolitan area. Moreover, the change being requested will not result in a material loss in service to areas and populations and even the loss area is "well served" by existing licensees.

Clearly, the instant case provides the opportunity to benefit a substantial population with no significant disruption to the present service area of the Station or its community of license.

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(Coolidge and Gilbert,
Arizona)

MM Docket No. 95-109
RM-8665

To: The Chief
Allocations Branch

COMMENTS

Rainbow Broadcasting, Inc. ("Rainbow"), licensee of Station KBZR(FM), Coolidge, Arizona¹ ("Station"), by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits its Comments in the above-referenced proceeding. In support thereof, Rainbow states as follows.²

I. INTRODUCTION

1. By the Rulemaking Petition it filed, Rainbow asked the Commission to propose the amendment of the FM Table of Allotments so that FM Channel 280 would be allotted to Gilbert, Arizona, as a Class C2 facility, in place of Coolidge, Arizona, as a Class A

¹ The call sign for the station was changed from KAZR to KBZR on March 10, 1995. See Public Notice, Report No. 250, released March 17, 1995.

² In response to Item 2 of the Appendix to the NPRM, Rainbow wishes to advise the Commission that its present intention is to construct the station promptly if authorized by the Commission.

facility,³ and that the license for the Station be modified to operate on Channel 280C2 at Gilbert, in place of Coolidge, Arizona. In connection therewith, Rainbow established that the proposed allotment would result in Gilbert securing its first aural transmission service, while Coolidge would continue to have a local aural transmission service. It was further shown that the addition of a first transmission service to a community (Gilbert) with a greater and faster growing population would serve the Commission's allotment goals under Section 307(b) of the Communications Act of 1934, as amended.

2. While the Petition was initially dismissed by action of the Acting Chief of the Allocations Branch, the Chief of the Allocations Branch subsequently granted reconsideration in response to a timely Petition for Reconsideration and Reinstatement filed by Rainbow. Coolidge and Gilbert, Arizona, DA 95-1492, released July 17, 1995. The instant Comments are submitted in response thereto.

II. ARGUMENT

3. Initially, Rainbow submits that an ample basis exists for changes proposed in the NPRM. See Atlantic and Glenwood, Iowa, DA 95-1583, released July 25, 1995. In this regard, Rainbow notes that its proposal does not leave the community of Coolidge unserved. Even if the allotment change is granted, Coolidge will continue to have an aural voice in the form of Station KCKY(AM),

³ As a result of a one-step upgrade, the Station, effective on February 13, 1995, was upgraded to a Class C3 facility. Public Notice, Report No. 22089, released February 27, 1995.

Coolidge, Arizona. In contrast, Gilbert, which presently has no aural service, will obtain its first transmission service. Coolidge is a community of only 6,934; Gilbert has nearly seven times the population. Further, the change will result in a net population gain of 1,287,961 persons and a 3,863 square kilometer land increase within the 60 dBu service contour.

4. In the NPRM, Rainbow was requested to address a series of points the Commission found necessary for its consideration of whether to amend the Table of Allotments. The first request was for a showing whether Gilbert should be credited with the aural transmission services licensed in the Phoenix Urbanized Area. RKO General (KFRC), 5 FCC Rcd 3222 (1990) ("KFRC"), Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) ("Tuck"), and Elizabeth City, North Carolina, and Chesapeake, Virginia, 9 FCC Rcd 3586 (1994) ("Chesapeake").

5. While Rainbow is responding to the request, Rainbow submits that it is not necessary in this instance due to Gilbert's location. Gilbert is not located entirely within the Phoenix Urbanized Area. The community is not a close-in suburb of Phoenix. Rather, it lies 17.8 miles to the southeast of Phoenix⁴ and at its rural fringes. As indicated on Exhibit A hereto, only 73.3% of Gilbert's land area and 97.8% of its population lie within the Urbanized Area of Phoenix, with the remainder being considered by the Census Bureau to be part of rural areas. Further, as

⁴ This reflects the distance between the U.S.G.S. coordinates for Gilbert and Phoenix (Exhibit A).

indicated by Exhibit A, in order for the Station to provide the requisite 70 dBu signal to Gilbert, the Station will not be able, by virtue of Gilbert's location and distance separation to a station on an adjacent channel in Glendale, Arizona, to provide a signal of 70 dBu strength to any part of the city of Phoenix and will not even place a 60 dBu signal over all of the Phoenix Urbanized Area. These factors point to why it is incorrect to consider Gilbert to be a part of the Phoenix Urbanized Area for allotment purposes. Consequently, the Commission should treat Gilbert as being entitled to the first service preference and not even engage in the so-called "three factors" test.

6. Even assuming that it is necessary to undertake the "three factors" analysis, there is an ample basis upon which to award Gilbert the requested first service preference. The "three factors" discussed in the cases are signal population coverage, relative size of the requested community and the central city, and the interdependence of the requested community with the central city. As Rainbow will show, infra, each of the criteria supports the reallocation of the channel as proposed by Rainbow.

7. Turning first to the issue of signal population coverage, Exhibit A analyzes the predicted coverage of the Station should it be reallocated to Gilbert. Unlike KFRC and Tuck, the proposed coverage of the Station in this matter will not result in a commonality of coverage with the broadcast stations allotted to the central city. The predominant sites for broadcast transmission facilities licensed to Phoenix is the antenna farms at South

Mountain and Mummy Mountain. Due to site restrictions and the location of Gilbert at a substantial distance to the southeast of Phoenix, the transmitter for the Station cannot be located at these antenna farms. Consequently, the Station will not be able to place a 70 dBu signal over any part of the city of Phoenix or provide the same broadcast service as the FM radio stations licensed to Phoenix. In fact, even the predicted 60 dBu contour does not encompass the entire Phoenix Urbanized Area.

8. These facts clearly distinguish this case from those previously decided. In KFRC, all the applicants had proposed identical broadcast transmission facilities with service over an extensive area. Likewise, in Eatonton and Sandy Springs, Georgia and Anniston and Linesville, Alabama, 70 RR 2d 182 (1991) ("Eatonton"), the petitioner proposed its transmitter site to be within the central city. However, in Tuck, the Commission noted that a failure to provide complete coverage of the central city was a factor favoring the requested allotment. Given the location of the proposed transmitter and the restricted service to be provided to the central city in this case, this factor operates in Rainbow's favor.

9. The second criterion, involving size and proximity, also favors the requested allotment. Gilbert lies 17.8 miles from the city of Phoenix. In Eatonton, in contrast, the community of Sandy Springs was immediately adjacent to Atlanta. Gilbert has a population of 45,000, nearly three times the size of the community of Waxahachie, involved in the Tuck case. Gilbert's urbanized

area population is 0.1% of the total population (assuming Census and not present populations) within the Phoenix Urbanized Area and Gilbert's urbanized land area is 2.7% of the total within the Phoenix Urbanized Area. Rainbow recognizes that its share of the Urbanized Area is small and that this is the single disadvantage in the consideration of this allotment proposal. However, Gilbert's location at the outer, rural bounds of the Urbanized Area, and its rapid growth, both serve to overcome the comparative population handicap. See Chesapeake, supra.

10. Turning lastly to the key point of interdependence (see Tuck, 65 RR 2d at 410), there is ample evidence to support Gilbert as an independent community. This conclusion is based on the eight factors provided for in Tuck (id. at 409). These factors, which have been drawn from the Director of Economic Development of the Town of Gilbert and other official sources, are as follows:

A. Employment Characteristics. Gilbert and its surrounding areas provide the locations for employment of Gilbert residents. According to Exhibit B, a study prepared by the Arizona State University found that 63% of the working population living in Gilbert worked in Gilbert or communities within a ten-mile radius of Gilbert. Thirteen percent of Gilbert's working population actually worked in Gilbert, where 3,500 to 4,500 people are employed (Exhibit B). Only 25% of the Gilbert workforce was actually employed in the central city.

B. Mass Media. While Gilbert has no broadcast voices, it does have print media operating in the community. The Gilbert

Tribune is a daily newspaper published in Gilbert and the Gilbert Independent and New Times are weekly newspapers published in Gilbert (Exhibit C at p. 29). The Town of Gilbert has franchised its own cable television system which is operated by Insight Cable Co.

C. Is Gilbert Perceived As Part of A Larger Metropolitan Area? The issue of whether the Gilbert community considers itself as integral to, or separate from, the Phoenix metropolitan area was put to the Director of Economic Development for Gilbert. His response is (Exhibit C):

In my first letter I briefly mentioned that Gilbert is a self sustaining community. I believe that statement is so important it bears repeating and even more emphasis. Gilbert is a community of 45,000 residents and growing. In order to serve that population and the added growth that is inevitable, we have planned very diligently for the future. Many of the things that were just plans and visions a few years ago are now reality. We are a full service community that provides its residents with two libraries, the full range of Police and Fire protection, provides water and sewer services, offers a complete array of Parks & Recreation programs, and has a superior public school system. Our community leaders have worked very hard to make sure that Gilbert is a full service community and although we are technically a part of the Phoenix Metropolitan Area, we are far enough away from the heart of Phoenix that those who live and work here consider us to be very independent from the rest of the valley.

D. Local Government

Gilbert has its own government, operating under the Council-Manager form of government (Exhibit B). The government of Gilbert operates on a budget in excess of \$25 million and provides its citizens with the following services (Exhibits B and D at p. 30 - 31): police, fire, emergency medical services, planning and

zoning, schools, libraries, and waste water treatment.

E. Telephone Book; Zip Code

Attached hereto as Exhibit E is a copy of the front page of the local telephone directory issued by U.S. West, the local exchange carrier for the area. The directory serves communities to the east and south of Phoenix, including Gilbert. The city of Phoenix is not part of this directory. Gilbert has four zip codes dedicated to it: 85233, 85234, 85296, and 85299.

F. Local Facilities

Gilbert has extensive retail establishments and health facilities among the 900-1,000 businesses in Gilbert (Exhibit B). These facilities include grocery stores, restaurants and retail establishments (Exhibit D at p. 4, 28). The Casa Blanca Clinic is located in Gilbert, employing 350 medical personnel to provide a variety of medical services (Exhibit D at p. 28). Gilbert has excellent road access to its region (Exhibit D at p. 20).

G. Advertising Market

Gilbert's Director of Economic Development points to the difference between Gilbert and Phoenix in the media marketplace (Exhibit B). He notes that outlying communities such as Gilbert are "overlooked and overshadowed" by Phoenix stations. The result is that Gilbert has been able to support its own daily and weekly newspapers. The existence of these media outlets is a significant indication that Phoenix and Gilbert are different media markets, each having unique advertising needs.

H. Reliance on the Central City for Services

Gilbert's independence as a community, both in terms of government services and local businesses, is evident from the information supplied (Exhibits B, C, and D). These services are provided by the Town of Gilbert for its residents. There is no reliance on the central city or any regional authority for such services.

11. These factors clearly distinguish Gilbert from the communities involved in the other cases considered by the Commission. In KFRC, the community had no local media, no local health service, no public perception of independence from the central city, and no indication that the local community could support a radio station. See also Eatonton, supra at p. 188. Like the community of Waxahachie, involved in the Tuck case, Gilbert is not integral to the Phoenix area. On the contrary, it is ignored by the Phoenix media, and is a self-governing community with a full range of governmental facilities and commercial service. Clearly, six of the eight criteria from Tuck favor Rainbow's proposal. The only criteria that raise any question are the absence of an individual Gilbert telephone directory (where the local directory is a regional one exclusive of the central city) and the fact that only 13% of the residents of Gilbert work in the community (though only 25% work in the central city). Rainbow submits that the clear evidence on the six points in favor of Gilbert's status as an independent community far outweigh the mixed evidence on the other two points.

12. Next, the Commission asked that Rainbow address the public interest benefit resulting from a grant of the change in the Table of Allotments. Section 307(b) of the Communications Act of 1934, as amended, sets the allotment goals for the Commission. Competing against each other are the goals of maintaining the public's expectation of the maintenance of existing service and service benefits from a proposed change. Rainbow submits that, in this instance, the substantial increase in service that will be provided far outweighs the maintenance of existing service. The Commission has recognized this elsewhere and should apply that precedent herein. Atlantic and Glenwood, Iowa, supra⁵; Chesapeake, supra.

13. The Commission finally requests that Rainbow submit a study showing the areas and populations that will lose existing service if the changes in the Table are made. As indicated in Exhibit A, the loss area consists of 13,763 persons within 1,371 square kilometers. Even so, the entire loss area, as well as almost all of the substantial gain area, already have at least five reception services, sufficient to make the areas "well served." NPRM at n. 3.

III. CONCLUSION

14. Taking all of this evidence into consideration, there is a clear case in favor of treating Gilbert as deserving of its

⁵ In the Atlantic and Glenwood, Iowa case, the change in the Table of Allotments left the smaller community, Atlantic, with a daytime-only station. Here, Gilbert will continue to have a fulltime aural service licensed to it.

first media voice. The proposed facility provides its principal service to Gilbert and not to the central city and is not located at one of the Phoenix antenna farms. The Town of Gilbert is not a mere suburb of Phoenix but is a separate and distinct community lying at its outer, rural fringes. Finally, and most important, when the eight criteria first set out in Tuck are considered, it is evident that Gilbert is truly an independent community that relies on its own business and government establishments and not the services and commercial facilities found in Phoenix. As a result, the public interest benefit resulting from the improved service far outweighs the loss to Coolidge of one of its two aural transmission services.

WHEREFORE, for the foregoing reasons, Rainbow Broadcasting, Inc. respectfully requests that the Commission grant the requested change in the Table of Allotments and, thereby, amend Section 73.202(b) of the Commission's rules to reallocate Channel 280 from Coolidge to Gilbert, Arizona as a Class C2 facility, and issue an order modifying the Station's license to change its community of

license accordingly.

Respectfully submitted,

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Its Attorneys

Dated: September 6, 1995

EXHIBIT A

DENNY & ASSOCIATES, P.C.
CONSULTING ENGINEERS
WASHINGTON, DC

ENGINEERING EXHIBIT
COMMENTS IN SUPPORT OF RULE MAKING PETITION
MASS MEDIA DOCKET NUMBER 95-109
RAINBOW BROADCASTING, INC.
STATION KBZR COOLIDGE, ARIZONA

ENGINEERING STATEMENT

INTRODUCTION

This engineering exhibit of which this statement is part has been prepared on behalf of Rainbow Broadcasting, Inc. (hereinafter Rainbow), licensee of FM station KBZR, channel 280C3 (103.9 megahertz), Coolidge, Arizona, to provide additional data in support of its rule making petition requesting the substitution of channel 280C2 at Gilbert, Arizona, for channel 280C3 at Coolidge, Arizona, and the concomitant modification of the KBZR license to specify operation on this channel.

In the Notice of Proposed Rule Making (NPRM) in Mass Media Docket Number 95-109 issued by the Federal Communications Commission (hereinafter FCC) for Rainbow's proposed Gilbert, Arizona, channel 280C2 allotment, the FCC staff requested submission of additional data regarding the areas and

populations which will lose existing service if the requested channel change is made. In addition, the FCC staff requested information on the number of other commercial aural services currently available within the proposed Gilbert, Arizona, channel 280C2 allotment gain and loss areas.

DETERMINATION OF GAIN AND LOSS AREAS

KBZR currently is licensed (FCC File Number BLH-950319KZ) to operate on channel 280C3 at Coolidge, Arizona,¹ using a nondirectional antenna, 1.40 kilowatts effective radiated power (ERP), and 410 meters antenna radiation center height above average terrain (HAAT). The licensed KBZR facilities produce a predicted 1.0 millivolt per meter (mV/m) contour that encloses 130,929 persons² within 4,816 square kilometers of land area.

¹ The geographic coordinates of the licensed KBZR transmitter site, referenced to 1927 North American Datum (NAD 1927), are 33° 00' 11" North Latitude, 111° 40' 26" West Longitude.

² Based on the 1990 United States Census.

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Engineering Statement
KBZR, Coolidge, Arizona

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Assuming maximum permissible channel 280C2 facilities³ at the Gilbert, Arizona, reference site specified in the NPRM in Mass Media Docket Number 95-109,⁴ the predicted 1.0 mV/m contour for the proposed KBZR channel 280C2 allotment will encompass 1,418,890 persons² within 8,679 square kilometers of land area.

Figure 1 of this engineering exhibit is a portion of the United States Geological Survey (U.S.G.S.) Arizona state base map on which the predicted 1.0 mV/m contours for the licensed KBZR channel 280C3 and the assumed KBZR channel 280C2 have been plotted. Using a compensating polar planimeter in the prescribed manner on the original map of Figure 1 and taking the appropriate map scale into consideration, the land areas within the gain and loss areas between the licensed and assumed KBZR facilities were determined. The populations within the KBZR gain and loss areas were determined using a

³ 50 kilowatts ERP at 150 meters antenna radiation center HAAT.

⁴ The geographic coordinates of the Gilbert, Arizona, channel 280C2 reference site are 33° 22' 37" North Latitude. 111° 28' 55" West Longitude (NAD 1927).

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Engineering Statement
KBZR, Coolidge, Arizona

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computer algorithm which enumerates the populations of those census divisions that have centroids included within the predicted gain or loss area.

The proposed substitution of channel 280C2 at Gilbert, Arizona, for channel 280C3 at Coolidge, Arizona, will result in a gain of service to 1,301,724 persons⁵ within 5,234 square kilometers of land area, and a loss of service to 13,763 persons⁵ within 1,371 square kilometers of land area.

**DETERMINATION OF EXISTING COMMERCIAL
AURAL SERVICES TO GAIN AND LOSS AREAS**

Using data for licensed and authorized FM and AM stations contained in the August, 1995, FCC FM and AM engineering databases and FCC contour prediction methods contained in Sections 73.183 and 73.313 of the FCC Rules, the number of other commercial aural services existing within the gain and loss areas created by the Rainbow proposal was evaluated. All portions of the loss area created by the Rainbow proposal in Mass Media Docket Number 95-109 currently receive five or more other commercial aural services. It is estimated

⁵ Based on the 1990 United States Census.

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Engineering Statement
KBZR, Coolidge, Arizona

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that all but 242 square kilometers of the 5,234 square kilometers of land area within the area gained by the Rainbow proposal (approximately 94 percent) receive five or more other commercial aural services. There is no area within the gain area receiving fewer than two other commercial aural services. Portions of the 242 square kilometers of land area not currently receiving five or more other services receive two, three, or four other services. The estimated 242 square kilometers of land area receiving fewer than five other commercial aural services is subdivided by number of other services as follows:

- Two other commercial aural services: 24 square kilometers of land area
(0.5 percent of total gain area)
- Three other commercial aural services: 197 square kilometers of land area
(3.8 percent of total gain area)
- Four other commercial aural services: 21 square kilometers of land area
(0.4 percent of total gain area)

The Gilbert channel 280C2 gain area currently receiving only two, three or four other commercial aural services is located in the extreme eastern portion of the gain area, predominately within the Tonto National Forest. However, the community of Superior, with a 1990 United States Census population of 3,468 persons, is situated mostly within the gain area currently estimated to receive only two other commercial aural services.

CONCLUSIONS

The proposed substitution of channel 280C2 at Gilbert, Arizona, for channel 280C3 at Coolidge, Arizona, and concomitant modification of the KBZR license to specify operation on channel 280C2 at Gilbert, results in a predicted gain of service to 1,301,724 persons⁶ within 5,234 square kilometers of land area. Some of the persons residing within the area gained by the Rainbow proposal will be receiving a predicted third, fourth or fifth other commercial aural service for the first time.

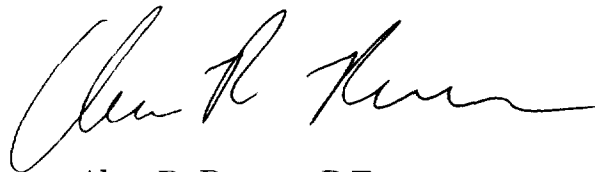
⁶ Based on 1990 United States Census.

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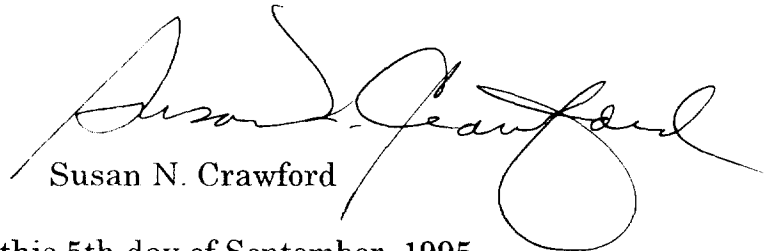
Engineering Statement
KBZR, Coolidge, Arizona

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The proposed substitution of channel 280C2 at Gilbert, Arizona, for channel 280C3 at Coolidge, Arizona, and concomitant modification of the KBZR license to specify operation on channel 280C2 at Gilbert, results in a predicted loss of service to 13,763 persons⁷ within 1.371 square kilometers of land area. All of the persons residing within the predicted loss area currently receive five or more other commercial aural services and will continue to receive five or more other commercial aural services if the channel 280C3 allotment at Coolidge, Arizona, is upgraded to channel 280C2 and relocated to Gilbert, Arizona.

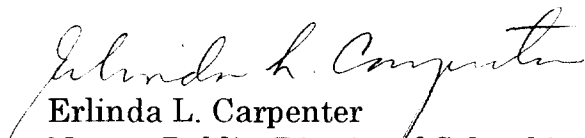


Alan R. Rosner, P.E.



Susan N. Crawford

Subscribed and sworn to before me this 5th day of September, 1995.



Erlinda L. Carpenter
Notary Public, District of Columbia
My commission expires August 31, 1997

⁷ Based on 1990 U.S. Census.

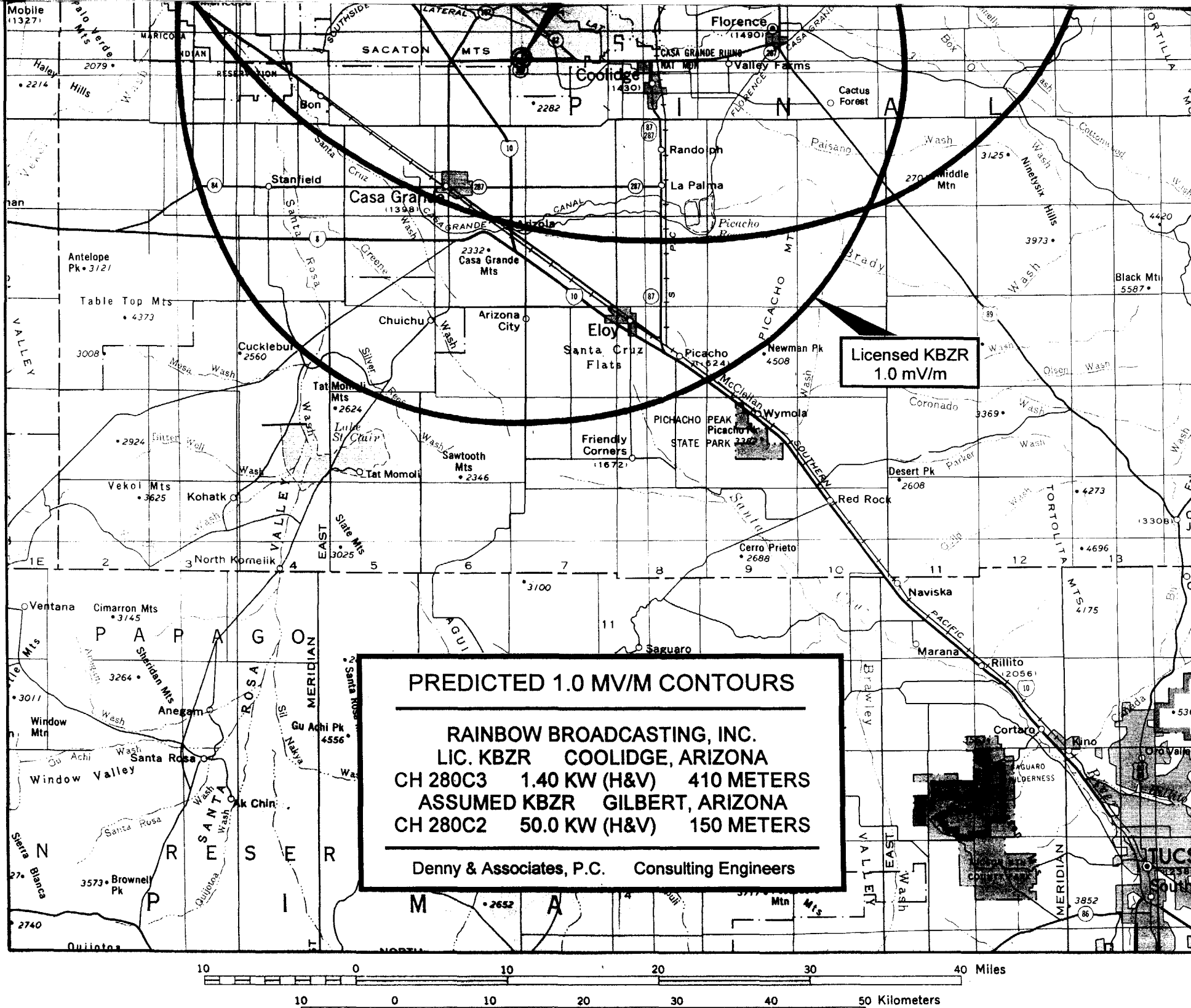


Figure 1

